

REMARKS

Claims 1-3, 5-11, 13-15, 17, 19-22, 24, 26, and 27 are now pending in the application. Claims 1-3, 5-11, 13-15, 17, 19-22, 24, 26, and 27 stand rejected. Claims 1, 13, 19, 26 and 27 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

CLAIM OBJECTIONS

Claims 13 and 19 stand objected to for certain informalities. Applicant has amended these claims according to the Examiner's suggestions. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 112

Claims 19-22, 24 and 27 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. Applicant directs the Examiner's attention to Claim 19 which has been amended to overcome the rejection.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-3, 5, 7-11, 13, 14, 17, 19-22, and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sutter et al. (U.S. Pat. No. 4,328,593). In view of the amendments and arguments herein, this rejection is respectfully traversed.

Applicant respectfully traverses the Examiner's characterization of "the extended articulating surface extended only from a portion of the terminating rim of said hemispherical exterior articulating surface." The Office broadly interprets this limitation to allow protrusion radially from the periphery of the terminating ring. Applicant submits that the cited interior flange 3C is not an "articulating surface" and, as such, does not teach the limitation.

In an attempt to expedite prosecution, Applicant has amended independent Claims 1, 13, and 19 to clarify that the rim defines a coupling portion on only a portion of the rim or hemispherical equator. The Sutter reference does not teach an extended articulating surface that protrudes only from a portion of a terminating rim of said hemispherical exterior articulating surface.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-3, 5-11, 13-15, 17, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over BIOMET brochure (engineering drawings submitted 7/22/1997, and cited in Applicant's IDS of 12/17/2003) in view of Sutter et al. Claims 1-3, 6-13, 15, 17, 19-22, 24, 26, and 27 stand rejected as being unpatentable over Long et al. (U.S. Publ. No. 2004/0193277 A1) in view of Sutter et al. Claims 5 and 14 stand rejected as being unpatentable over Long et al., as modified by Sutter et al., and further in view of Copeland™ Humeral Resurfacing Head (Biomet Orthopedics, Inc.: 2000 brochure; hereinafter the "Copeland brochure") in view of Sutter et al. These rejections are respectfully traversed.

In rejecting the claims, the Office acknowledges the BIOMET brochure does not

teach “a pair of intersecting flat planar inner surfaces, said planar surfaces being generally parallel to an integral straight anchoring device and forming a V-shaped surface.” The Office cites the Sutter reference throughout the Office Action for teaching this limitation.

While Sutter may teach a humeral head prosthetic having a plurality of interior ribs to prevent rotation, Sutter does not teach an extended articulating surface having a pair of intersecting flat planar surfaces and a concave interior surface as claimed.

To the contrary, Applicant submits that the Sutter reference teaches away from Applicant’s claims and, therefore, those skilled in the art would not look to Sutter. In this regard, Applicant directs the Examiner’s attention to Figure 9 and associated text at column 6, lines 54, through column 7, line 18, of Sutter. At this point, the Sutter reference specifically teaches away from the use of a non-smooth interior surface. Without accepting Sutter’s data, Applicant submits that those skilled in the art would not look to the Sutter reference to arrive at the claimed invention inasmuch as Sutter teaches away from disparate internal surface types which may lead to variations in bone to implant loading.

Furthermore, Sutter consistently refers to the cited structures as grooves or ribs in the cap. Sutter goes into detail when describing these features. The Examiner’s attention is directed to column 4, lines 55-64, which describe these features. “As it can be seen particularly from Figure 7, grooves 3F are wider than ribs 3G. All translations between groove 3F and rib 3G are continuously rounded.” Applicant directs the Examiner’s attention to Figure 7 of Sutter which clearly shows the rounded flanges as opposed to flat planar surfaces as claimed. The flat planar surfaces as claimed allow

for rotational alignment of the extended articulating surface. This rotational alignment problem is not addressed by Sutter.


With respect to the rejection of Claim 19, the Office states that the flat surface would be formed during the insertion of the head of Sutter. Applicant submits Sutter can not teach the claimed limitations as Claim 19 contains the limitation positioning a resurfacing humeral head implant..."after resecting a portion of the humeral head to form a pair of intersecting flat planar surfaces." Sutter simply does not teach this limitation.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: 
Christopher A. Eusebi, Reg. No. 44,672

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600
CAE/lf-s/smb

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